



**Contract Rules for Shipment of Packed Cocoa
Products in Containers on FOB Terms***

**(Applicable to contracts concluded
on or after 01 March 2008)**

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CONTRACT RULES FOR SHIPMENT OF PACKED COCOA PRODUCTS IN CONTAINERS ON FOB TERMS

PART 1: GENERAL CONDITIONS

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 01 MARCH 2008

1. APPLICATION OF CONTRACT RULES

1.1 Law

The contract shall be subject to English law both as to its formation and execution

The following shall not apply:

- (a) The Uniform Law on Sales and the Uniform Law on Formation;
- (b) The United Nations Convention on Contracts for the International Sale of Goods of 1980;
- (c) The United Nations Convention on Prescription (Limitation) in the International Sale of Goods of 1974 and the amending Protocol of 1980;
- (d) The Contracts (Rights of Third Parties) Act 1999.

1.2 Incorporation of Rules

- (a) Any contract incorporating these Contract Rules for Shipment of Packed Cocoa Products in Containers on FOB terms known as “CP4” shall also be deemed to incorporate the FCC Arbitration and Appeal Rules, which the Parties declare they are familiar with and agree to, and shall form part of the contract.
- (b) The FCC publishes French translations of CP4 and the FCC Arbitration and Appeal Rules but the original English language versions shall always take precedence.

1.3 FCC Arbitration

Any dispute arising under a contract which incorporates CP4 shall be settled by FCC arbitration in accordance with the FCC Arbitration and Appeal Rules.

The seat of the arbitration proceedings is England and the laws of England and the provisions of the Arbitration Act 1996 or of any other statutory modification or re-enactment thereof shall be the applicable procedural law.

Arbitration and Appeal proceedings shall be conducted in the English language on the basis of the English language versions of CP4 and the FCC Arbitration and Appeal Rules, unless and always subject to Rule 1.2 (b) the Parties have agreed and specified in the contract that proceedings are to be conducted in the French language on the basis of the French language versions of CP4 and the FCC Arbitration and Appeal Rules.

2. GENERAL DEFINITIONS

The following definitions are applicable to the Contract Rules for Shipment of Packed Cocoa Products in Containers on FOB Terms.

2.1 Period

Means a day or a series of days and runs without interruption. The first day of the Period is the one following the day on which the event occurred.

2.1.1 Day

Means a period of 24 hours, midnight to midnight.

2.1.2 Non-business day

Means Saturdays, Sundays and the officially recognised and/or legal holidays of the country where the Party required to do the act or to give any notice resides or carries on business or in the country where the act has to be done or the notice has to be received and any day which the FCC may declare as non-business days for specific purposes.

Should the time limit for doing any act or giving any notice expire on a non-business day, the time so limited shall be extended until the first business day thereafter. The period of shipment and notices to be given in connection with the same shall not be affected.

2.1.3 Business day

Means any day other than a non-business day.

2.1.4 Shipment

Shipment must be made within the specified calendar month or shipment period(s).

Prompt Shipment – means shipment within thirty days from the date of the contract.

Immediate Shipment – means shipment within fifteen days from the date of the contract.

Date of Shipment – means the date of loading of the goods as shown on the Bill of Lading, (as defined in Rule 2.6), in the absence of evidence to the contrary.

2.2 Party

Means a Buyer or a Seller acting as Principal to the contract.

2.3 Package

Means bags, sacks, cartons, drums and flexible intermediate bulk containers (FIBC) unless otherwise agreed between the Parties.

2.4 Shipment terms

Under these contract terms delivery of the goods takes place on board a vessel at the agreed or declared port of loading.

Under these contract terms one of the following options may apply:

2.4.1 Buyer arranging the freight

Under these contract terms the Buyer arranges and pays the freight.

2.4.2 Seller arranging the freight

Under these contract terms the Seller arranges the freight on behalf of the Buyer and the Buyer pays the freight.

2.5 Bill of Lading

Means an on Board Bill of Lading (B/L) in negotiable and transferable form or a corresponding Ship's Delivery Order (D/O) or its corresponding equivalent as used in multimodal transportation.

2.6 Weight**2.6.1 Shipping Weights**

Means the weight of a parcel of cocoa products calculated by multiplying the number of Packages within the parcel by the weight printed on the outside of each package, the result being recorded on the Bill of Lading.

2.6.2 Shipped Weight

Means the net weight of a parcel of cocoa products weighed prior to shipment and recorded on the Bill of Lading and in a Weight Note which shall also record the tare of the Packages.

2.7 Port of Loading

Means the port agreed in or declared under the contract.

3. TRANSMISSION OF NOTICES**3.1 Mode**

All notices required to be served on the Parties pursuant to the contract shall be communicated rapidly in legible written form and contain evidence of the date and time of transmission. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as either telex, or letter if delivered by hand on the date of writing, or facsimile, or E-mail, or other electronic means, always subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the case of dispute, establish, to the satisfaction of the Arbitrators or Board of Appeal appointed pursuant to the FCC Arbitration and Appeal Rules, that the notice was actually transmitted to the addressee. If required by the sender, the receiver shall acknowledge receipt of a notice by one of the same methods.

3.2 Passing on

Unless otherwise expressly agreed by the Parties, all notices received by one Party shall be deemed to have been passed on in due time provided that the said notice is despatched by midnight local time to the other Party on the first business day following receipt of the said notice.

4. ASSIGNMENT OF INTEREST IN THE CONTRACT

No Party shall assign any interest in the contract without the consent in writing of the other Party which consent shall not be unreasonably withheld.

5. INSOLVENCY**5.1 Close-out for insolvency**

The following shall apply if before the fulfilment of the contract a Party becomes bankrupt or insolvent or resolves to become the subject of liquidation proceedings or winding up proceedings or receivership or a moratorium or proceedings or procedures which are equivalent or corresponding thereto or an application for the same:

- (a) such Party shall immediately inform the Counterparty of the same;
- (b) provided that the ability of the other Party to fulfil the contract shall be materially adversely affected, the Counterparty may cause the contract to be closed out by notice in writing to that effect to the other Party, whereupon the contract shall be closed out as at the date of the notice.

The Parties shall agree upon any appropriate remedy for any loss/cost/expense incurred by either Party. In the absence of such agreement the matter may be referred to arbitration and the arbitrators shall, in their absolute discretion, decide upon any appropriate remedy for any loss/cost/expense incurred by either Party. Unless the arbitrators consider it inappropriate, the market price at the date of the closing out shall be deemed to have been the market price at close of business on the date of the notice.

5.2 Balance of accounts for insolvency

If the contract is closed out pursuant to the Rule 5.1 and there exist any additional contracts between the same Parties which are subject to any FCC Rules (whether relating to cocoa beans or cocoa products) then the additional contracts shall be deemed to be closed out at the same time as the contract is closed out.

An account shall then be taken promptly by the Parties of all sums due from each Party to the other in respect of the contract and the additional contracts, if any, and all sums owed between the Parties shall be set off against each other and any amount which remains owing by one Party to the other shall be paid promptly.

5.3 Unenforceability

If this Rule 5, or any part, is prohibited by law or judged by a court to be unlawful, void or unenforceable, then this Rule 5 or any such part shall, to the extent required, be deemed removed and any remaining part shall continue in full force and effect and shall not in any way affect any other circumstances of or the validity or enforcement of this Contract.

6. SUPERINTENDENTS CLAUSE

Any Party may appoint a person to carry out the duties of a Superintendent in relation to weighing and/or sampling and/or otherwise. The Party must inform his Counterparty of such appointment in accordance with the appropriate provisions of these Rules and/or other provisions of the contract.

The appointed person, whether described as Superintendent, Supervisor, Surveyor, Representative or otherwise must be an FCC Member Superintendent except where:

- (a) no FCC Member Superintendent(s) is/are available or proximate to the port(s) concerned;
- (b) there is only one FCC Member Superintendent proximate to the port concerned and that Member Superintendent has been retained by the other Party to the contract;
- (c) the national laws or regulations require the exclusive use of governmental or other agencies not recognised by the FCC.

PART 2: EXECUTION OF CONTRACT

7. GENERAL

7.1 Separate Contracts

Each Bill of Lading quantity shall be enforceable as a separate contract and the terms of the contract shall be deemed to be the terms of each such separate contract.

Any container quantity delayed and/or short delivered shall be enforceable as a separate contract and the terms of the contract shall be deemed to be terms of each such separate contract.

7.2 Quality and Condition

7.2.1 General

The product supplied is warranted to be of satisfactory quality, in good condition and fit for human consumption. Unless otherwise agreed between the Parties, the standards of the Codex Alimentarius for cocoa products current at the date of the contract will apply.

7.2.2 Quality

Quality shall be final at departure or on arrival as agreed between parties

7.2.3 Condition

Condition shall be final at point of the stuffing of the containers.

7.3 Option Contracts

7.3.1 Origin/Brand/Port at Seller's Option

When the goods have been sold on terms with the option to the Seller as to which origin(s)/brand(s)/port(s) will be delivered, the Seller must advise the Buyer in writing latest 15 days prior to the actual shipment of the goods of the name(s) and quantity(ies) of the origin(s)/brand(s)/port(s) he will deliver.

7.4 Charges and Costs

A demand for reimbursement of any charge/cost/expense incurred by one Party on behalf of the other Party must be accompanied by appropriate evidence of the charge/cost/expense incurred.

8. DELIVERY

8.1 Quantity

The contract quantity is net of tare and is subject to a tolerance of 0.25%, based on the weight of the product as printed on the Packages (in case of a Shipping Weight contract), or on the packing list (in case of a Shipped Weight contract).

The above tolerance shall not apply whenever a contract is closed out by payment of differences between purchase and sale prices.

8.2 Transport

8.2.1 Transport requirements

All means of transport have to comply with the relevant requirements of any competent authority in the countries of shipment, transit and delivery.

The ship's hold, vehicle and/or container must be clean, dry, odourless and in good condition and must be suitably prepared for the transport of cocoa products. Containers shall be sealed after stuffing.

All vessels must meet the requirements current at the time of shipment of either the Institute Classification Clause or the Police Française d'Assurance Maritime sur Facultés.

8.3 Packaging

Cocoa products shall be packed in new hygienic Packages suitably lined and in wrappings of sufficient strength to withstand the transit and storage, and which are suitable for food contact use.

8.4 Nomination of vessel

8.4.1 Buyer booking and arranging the freight

The Buyer shall nominate the vessel(s), the quantity required for loading and give a minimum of fifteen days notice to the Seller of the estimated time of arrival at the port of loading. Provided the Buyer acts promptly and the original shipment period is maintained the Buyer may give a notice to the Seller of:

- (a) a change in the estimated time of arrival and/or
- (b) a substitution of the nominated vessel.

Should the Seller fail to load on the duly nominated and arrived vessel(s) he shall be deemed to be in default except if the carrier has refused to accept the goods on board and the Seller is not at fault. In such a case the Buyer shall reimburse the Seller the extra costs incurred from the second day following the estimated time of arrival to the actual date of completion of loading.

The Buyer must ensure that the cargo space is made available within sufficient time to enable the Seller to complete loading of the goods by the last day of the shipment period, failing which the Buyer shall be deemed to be in default.

8.4.2 Buyer booking the freight and Seller reserving the space

The Buyer shall give Notice to the Seller nominating the shipping line to be used, the port of destination and the quantity required for loading at least fifteen days before the commencement of the shipment period.

Upon receipt of such Notice, the Seller shall reserve the freight space with the shipping line(s) nominated by the Buyer.

The Seller shall confirm to the Buyer the vessel so booked, the tonnage and the estimated time of arrival of the vessel at the port of loading.

Should the Seller fail to complete loading of the contractual quantity within the shipment period, he shall be in default in respect of the quantity not shipped, unless the Buyer has failed to make suitable freight available for loading by the end of the shipment period, in which case the Buyer is deemed to be in default.

8.5 Bills of Lading

The Seller shall present clean through Bill(s) of Lading issued by a Liner operator or their agent, stating that the parcel is "loaded on board" or "received on board" or "shipped on board", and specifying the container numbers, the seal numbers, the goods, the net weight and, if appropriate, the number of packages and shipping marks, all of which shall be considered proof of shipment unless the contrary is proved.

The date of loading shown on the Bill of Lading shall be regarded as the date of shipment, unless the contrary is proved.

8.6 Liner terms

Only Liner Bill(s) of Lading in a form customarily used for shipment of the goods from the port of loading shall be issued and presented for payment under the Contract.

9. ADVICE OF SHIPMENT

If so agreed between the Parties, the Seller shall send a Notice to the Buyer containing the following:

- (a) Contract Number and Date,
- (b) Description of goods shipped including the origin,
- (c) Quantity of goods shipped (weight and number of Packages),
- (d) Whether the parcel is in complete or partial fulfilment of the quantity sold,
- (e) Name of the vessel,
- (f) Bill of Lading date and number,
- (g) Container number(s) and seal number(s),
- (h) Port of loading,
- (i) Port of discharge
- (j) The name of the supervisor appointed by the Seller, if any.

or alternatively send a legible copy of the Bill(s) of Lading.

10. PRICE FIXATION

10.1 Price Fixation terms

If the price of the contract is to be on a price fixation basis, the contract shall state the ratio against either:

- (a) i. the applicable Liffe Administration and Management ("Liffe") Cocoa Futures Contract delivery month; or
ii. the applicable Intercontinental Exchange Futures US ("ICE") Cocoa Futures Contract delivery month

and

- (b) whether price fixation shall be at the Seller's option, at the Buyer's option, or by mutual agreement.

10.2 Contract price and tonnage

The contract price shall be determined by the specified ratio applied to either:

- (a) the price at which Parties exchange Futures Contracts ("Against Actuals" / "Exchange for Physicals"); or
- (b) the Cocoa Futures' ask price for the specified market delivery month in the case of price fixation at the Buyer's option, subject to availability of volume on the Futures Market; or
- (c) the Cocoa Futures' bid price for the specified market delivery month in the case of price fixation at the Seller's option, subject to availability of volume on the Futures Market; or
- (d) a mutually agreed price.

Unless otherwise agreed between the Parties the resultant price shall be expressed in either Pound Sterling per Metric Tonne for contracts fixed against Liffe, or US Dollars per Metric Tonne for contracts fixed against ICE.

10.3 Time of price fixation

10.3.1 Price fixation prior to loading

In all cases price fixation must occur prior to the loading of the product

10.3.2 Price fixation at Buyer's or Seller's Option

The Party holding the price fixation option shall request fixation pursuant to Rule 10.4 subject to the following provisions:

- i) the price must be within the range quoted for the specified delivery month of either the Liffe or ICE (as applicable) Cocoa Futures Contract on that day; and
- ii) the time of fixation must be on any business day of the relevant Cocoa Futures Contract, starting from the date of the contract to the close of business on a date which is, in respect of the specified delivery month, two business days prior to the:
 - (a) last trading day, for contracts fixed against Liffe; or
 - (b) first notice day, for contracts fixed against ICE;

all dates inclusive, in accordance with Rule 10.2.

Notwithstanding the above, the Party holding the option to price-fix can request that the fixation be transacted by way of an "Against Actuals"/"Exchange For Physicals" transaction at any price within the price range established in respect of the delivery month to date, subject also to this being in accordance with the current Liffe or ICE requirements, as relevant. Nevertheless, this must be at both Parties' mutual consent, failing which, provisions (i) and (ii) above shall prevail.

10.3.3 Price fixation by mutual agreement

Should at any time Parties fail to mutually agree, price fixation shall be deferred until such time as agreement is reached. However latest dates for price fixation as in Rules 10.3.1 and 10.3.2 still apply.

10.4 Amount to be fixed

The Party holding the price fixation option may request fixation of any part of the contract provided that the quantity fixed shall be container loads or multiples thereof, except when pricing the balance of the total contract quantity.

10.5 Closure of either the Liffe or ICE Cocoa futures contracts

In the event of the closure of the Liffe or ICE Cocoa Futures Contract under emergency provisions or Force Majeure the price for any unfixed portion of the contract shall be fixed in accordance with the settlement procedures of the relevant Cocoa Futures Contract.

11. EXPORT COSTS

All duties, taxes, levies and other charges as well as the costs of carrying out customs facilities payable upon export of the goods shall be borne by the Seller.

12. DOCUMENTS**12.1 List**

The Seller shall present the following documents:

- (a) The invoice.
- (b) Complete set(s) of on board Bill(s) of Lading as per Rule 8.5
- (c) Certificate of origin
- (d) For Shipped Weight contracts a weight note in accordance with Rule 16.4
- (e) Any other documents agreed by the Parties at the time of concluding the contract.

If the Seller fails to present any document required under this Rule, then the Seller shall be liable for any extra charge/cost/expense incurred, including import duties, and paid by the Buyer.

12.2 Guarantees for incomplete documents

The Seller may present one original out of any set(s) of Bill(s) of Lading together with a letter of guarantee for any missing Bill(s) of Lading which the Buyer may require to be issued or countersigned by a first-class bank acceptable to the Buyer - such acceptance not to be unreasonably withheld by the Buyer. The Seller may provide letter(s) of guarantee for any other missing document(s) which the Buyer may likewise require to be issued or countersigned by a first-class bank acceptable to the Buyer - such acceptance not to be unreasonably withheld by the Buyer.

13. PRESENTATION AND PAYMENT OF DOCUMENTS**13.1 Place**

All documents required under the contract shall be presented to the Buyer for payment at the place specified in the contract. If no place for presentation is stated, then it shall be at the Buyer's address as shown on the contract. If requested by the Seller, the Buyer shall immediately provide the name and address of a first class bank through which documents may be presented.

13.2 Late presentation

If the documents are not presented to the Buyer before arrival of the vessel at the port of discharge, any related loss/cost/expense and/or any bank guarantee charges necessarily incurred shall be borne by the Seller.

If the vessel owner confirms in writing the terms of a letter of indemnity, which the Seller is prepared to provide, and pursuant to which the vessel owner is prepared to discharge in the absence of Bill(s) of Lading, then the Buyer shall be obliged to accept discharge.

13.3 Amount

The amount of the invoice shall be based on the weight as stated on the Bill of Lading and as provided for in Rule 2.6.

13.4 Mode of payment

Payment shall be Cash Against Documents on first presentation and, unless otherwise agreed, the Parties must specify within the contract the mode of payment from one of the options below.

If the Parties do not agree upon the mode of payment in accordance with this Rule then all charges, excluding the transfer costs of Buyer's bank, shall be for the Seller's account.

If one of the Parties, having agreed upon a mode of payment at the time of entering into the contract, subsequently requests the other Party to consent to a different mode of payment, then all additional charges arising therefrom shall be for the account of the Party requesting the change. The Party to whom the request is made shall not unreasonably withhold its consent to such a change in the payment terms.

13.4.1 Cash Against Documents by Letters of Credit

Letters of Credit must be Irrevocable and confirmed.

Presentation of documents under such Letters of Credit shall be governed by the edition of the Uniform Customs and Practice for Documentary Credits ("UCP") current at the time of opening the Letter of Credit together with any modifications to the UCP or further editions of the UCP which become current between the opening of and negotiation of the Letter of Credit.

13.4.2 Cash Against Documents by Documentary Collection

Presentation of documents as a Documentary Collection shall be governed by the edition of the Uniform Rules for Collections current at the time of presentation of documents.

Payment shall be by Telegraphic Transfer (TT) or equivalent rapid transfer of funds with payment at sight on first presentation of, and in exchange for, the shipping documents complying with the terms of the contract. The Buyer is obliged to accept such shipping documents.

The value date for payments made by the Buyer shall be the business day following that on which the documents were presented.

When documents are presented through the banking system as a collection, bank charges of Seller's bank are for Seller's account and bank charges of Buyer's bank are for Buyer's account.

13.4.3 Cash Against Documents presented "In Trust"

Documents may be presented directly to the Buyer during normal office hours. If a Seller elects to send documents in trust all charges, excluding the transfer costs of Buyer's bank, are for Seller's account.

Payment shall be by Telegraphic Transfer (TT) or equivalent rapid transfer of funds with payment at sight on first presentation of, and in exchange for, the shipping documents complying with the terms of the contract. The Buyer is obliged to accept such shipping documents.

The value date for payments made by the Buyer shall be the business day following that on which the documents were presented.

13.5 Non-payment

If there is an unreasonable delay by the Buyer in making full payment in accordance with Rule 13, the Seller may exercise any one or more of the following rights:

- (a) to charge interest in accordance with Rule 14;
- (b) with prior notice, to suspend any further deliveries until payment is made;
- (c) with prior notice, to change the basis of the contract to payment in advance or such other terms as the Seller may deem appropriate. Any additional costs arising therefrom shall be for the Buyer's account.

These rights are not all inclusive and are without prejudice to all other rights that the Seller may have.

If, at any time when the Seller is entitled to exercise his rights under this Rule, there exist any additional contracts between the same Parties which incorporate the terms of this Rule the Seller shall have the same rights under any or all such additional contracts.

14. INTEREST

Interest shall be payable on all sums which become due, whether by debt or damages, from the date on which such sums become due to the date of payment, whether such payment is made before or after the commencement of arbitration or proceedings for recovery of the same.

If the Parties fail to agree on the interest payable for the currency (ies) in which the debt(s) was/were incurred, then either of them may refer the dispute to arbitration.

15. SAMPLING, SUPERVISION AND WEIGHING

15.1 Sampling

15.1.1 Quality on arrival

A representative sample shall be drawn, sealed and labelled by the Buyer immediately after unstuffing of the container.

In the event that the Buyer considers the quality of the goods not to be in accordance with the contract he must notify the Seller as soon as possible but no later than 21 days after the unstuffing of the container. If

the parties fail to resolve the dispute amicably, arbitration samples must be drawn in accordance with Part 4 of these Contract Rules within 28 days of the unstuffing of the container. The Buyer must give the Seller two business days notice of the date, place and time of the drawing of the arbitration samples in order that the Seller can, if he so wishes, nominate a Supervisor in accordance with Rule 15.2. The Buyer shall ensure that the giving of such notice and the drawing of arbitration samples can be completed within the permitted 28 day period.

15.1.2 Quality on departure

A representative sample shall be drawn, sealed and labelled by the Seller prior to stuffing of the container.

Buyer shall be entitled to sample the product at stuffing of the container, at his expense, according to sampling procedures to be agreed between Parties. In this case these samples shall be the arbitration samples.

If Parties fail to agree on a sampling procedure, then the Buyer shall have the right to draw samples in accordance with Part 4 of these Contract Rules at his expense, and these samples shall become the arbitration samples.

The Seller shall give at least 2 business days notice to the Buyer of the place, date and time of the stuffing of the container.

If the Seller fails to do so, than the Buyer is entitled to either:

- (a) accept Seller's sample, or
- (b) change the terms of the contract to quality on arrival.

If the Buyer does not exercise his right to sample after having received the Seller's notice then the Seller's sample shall be final.

15.2 Supervision

Either Party may appoint a representative to supervise weighing and/or sampling being carried out by the other Party.

Each Party is responsible for all costs of his Supervisor.

15.2.1 Parties Notifications

If one Party has notified the other Party of the appointment of a supervisor pursuant to Rule 15.2, then the Party in receipt of the notice of appointment must notify the other Party or his supervisor of the place, date and time of the weighing and/or sampling.

15.3 Unstuffing of the containers

Containers shall be unstuffed at the port of discharge or at any other place as agreed between the Parties and within a reasonable time after discharge of the vessel.

15.4 Weighing

15.4.1 Shipping Weights

The Buyer has the right to weigh the goods upon unstuffing of the containers. If he does not do so, Buyer loses the right to claim for short weight.

If a parcel is found to contain unsound Packages such Packages shall be segregated from the sound Packages and will not form part of any verification of the shipping weight against actual weight for the purpose of a short weight claim.

Any weighing must be done at place of unstuffing of the containers, using weighing equipment with a current recognised certificate issued by a competent Authority. If such equipment is not available, then Parties have to agree on a suitable location, near the place of unstuffing.

15.4.2 Shipped Weights

Weighing of goods shipped under each Bill of Lading is mandatory.

Suitable weighing equipment with a current recognised certificate issued by a competent Authority must be used at the place of stuffing the containers.

Weighing shall be carried out at the time and place of stuffing by the Seller in the presence of the Buyer's Supervisor (if nominated by the Buyer in accordance with Rule 15.2).

Should the goods not be weighed in accordance with the above and provided the Buyer can demonstrate that he is not responsible for the failure, then the Buyer is entitled to either:

- (a) accept the Seller's weight notes or;
- (b) accept the parcel on Shipping Weight terms.

15.5 Charges**15.5.1 Shipping Weights**

The Buyer shall pay all charges/costs/expenses incurred in weighing at the port of discharge or at any other place as agreed between the Parties, except Supervision cost incurred by Seller.

15.5.2 Shipped Weights

The Seller shall pay all charges/costs/expenses incurred in weighing at place of stuffing the container, except Supervision cost incurred by the Buyer.

15.5.3 Quality on arrival

The Buyer shall pay all charges incurred in sampling at the port of discharge or at any other place as agreed between the Parties, except Supervision cost incurred by Seller.

15.5.4 Quality on departure

The Seller shall pay all charges/costs/expenses incurred in sampling at place of stuffing the container, except Supervision cost incurred by the Buyer.

16. INSURANCE

Marine and war risk insurance including strikes, riots, civil commotions and mine risks to be effected by the Buyer with First Class Underwriters and /or First Class Insurance Companies (for the purpose of this Rule, First Class means a Standard & Poor's solvency rating of minimum BBB, or the equivalent thereof) who are domiciled or conducting business in the United Kingdom or France or who, for the purpose of any legal proceedings, accept a British or French domicile and provide an address for service of process in London or Paris.

The Buyer shall supply the Seller with confirmation thereof upon first demand of the Seller.

If Buyer fails to provide such confirmation, the Seller shall have the right to place such insurance at Buyer's cost and expense.

PART 3: CLAIMS, DISPUTES AND ARBITRATION

17. CLAIMS

17.1 Quality

In the event of a dispute on quality, and failing settlement, the arbitration samples taken in accordance with Rule 15.1 shall be sent with due dispatch to an independent accredited laboratory, whose analysis results shall be final. This laboratory shall be chosen by mutual agreement.

If Parties fail to agree on a laboratory or to settle on the basis of the analysis results of the nominated laboratory, the claimant may apply for arbitration as per Rule 20.1.

17.2 Short weight

For Shipping Weight contracts, any short weight established as per Rule 15.4.1. shall be invoiced by the Buyer to the Seller.

18. FORCE MAJEURE

18.1 Force Majeure

Should the Seller be prevented from making shipment, or the Buyer from taking delivery of the product sold, by Acts of God, war, strikes, riots, civil commotion, lockouts, fires, interruption of power, sabotage, machinery breakdown or any other event comprehended by the term Force Majeure, the time for shipment shall be suspended for the Period during which the Seller is prevented from making shipment or the Buyer is prevented from taking delivery as the case may be and extended for 30 days thereafter.

Should the period of suspension exist for a Period of 60 days or more beyond the contract period, the contract or any unfulfilled part thereof so affected shall be closed out as per Rule 18.2.

The Party invoking this clause shall notify the other Party of such fact forthwith and shall:

- (a) furnish proof of prevention if required by the other Party;
- (b) demonstrate that the event is irresistible so that the event renders the performance impossible;
- (c) either demonstrate the event is unforeseeable or if the event was foreseeable, demonstrate that reasonable steps had been taken to prevent or avoid it.

18.2 Close-out for Force Majeure

If shipment is still prevented at the end of the extended Period, the Parties shall agree on the market price for the contracted product at the end of the extended Period, to close out the contract.

Irrespective of which Party claimed Force Majeure the following procedure shall be adopted:

- (a) if the close-out price is higher than the contract price of the product, the Seller shall pay the Buyer the difference between the close-out price and the contract price;
- (b) if the close-out price is lower than the contract price of the product, the Buyer shall pay the Seller the difference between the close-out price and the contract price.

Failing an amicable agreement on the existence of Force Majeure or the close-out price, the matter may be referred to arbitration.

19. DEFAULT AND/OR INTENTION OF NON-PERFORMANCE

19.1 Payment

In addition to all provisions set out in Rule 13.5, the Seller has the right to put the Buyer in default for the shipment(s) made but not paid for.

In the event of non-payment at sight by the Buyer for documents complying with the conditions of the contract, the Seller may give the Buyer formal Notice to effect payment within two business days and may claim for loss of interest from the date of the formal Notice to the day the Buyer effects payment.

If payment is not made within that Period, the Seller may freely dispose of the goods and declare the Buyer in default, whereupon the contract shall be closed out. If the Parties cannot agree upon the terms at which to settle the close out then the dispute shall be referred to arbitration and will be subject to Rule 19.2.

If the Arbitrators decide that a default has occurred they shall declare the contract to be closed out and determine the market price at the date of default.

19.2 Close out for non-fulfilment

In default of fulfilment of the contract by either Party the other Party at his discretion shall, after giving notice, have the right to declare the contract balance to be closed out basis the market price on the day of default. In case of any dispute over the date of default or on the market price on that day, the matter shall be referred to Arbitration. The following procedure shall be adopted:

- (a) if the Seller is in default and if at the date of default the market price of the product to be delivered is higher than the contract price, the Seller shall be charged with the difference between that market price and contract price.
- (b) if the Buyer is in default and if at the date of default the market price of the product to be delivered is lower than the contract price, the Buyer shall be charged with the difference between that market price and contract price.

19.3 Intention of non-performance

Notwithstanding any other provision in these Contract Rules, if before the fulfilment of their respective contractual obligations either Party displays an intention not to perform or an inability to perform, the Counterparty may, by notice in writing to the Party, declare the Party to be in default and call for the contract to be closed out.

If the Parties cannot agree upon the terms at which to settle the close out then the dispute shall be referred to arbitration and will be subject to the FCC Arbitration and Appeal Rules. If the Arbitrators decide that a default has occurred they shall declare the contract to be closed out and determine the market price at the date of default.

The following procedure shall be adopted:

- (a) If at the date of default the market price of the goods contracted to be sold is higher than the contract price of the goods, and the party in default is the Seller, the Seller shall be liable to the Buyer for the difference between the market price and the contract price.
- (b) If at the date of default the market price of the goods contracted to be sold is lower than the contract price of the goods, and the party in default is the Seller, the Seller is not entitled to claim against the Buyer for any difference between the market price and the contract price.
- (c) If at the date of default the market price of the goods contracted to be sold is lower than the contract price of the goods, and the party in default is the Buyer, the Buyer shall be liable to the Seller for the difference between the market price and the contract price.
- (d) If at the date of default the market price of the goods contracted to be sold is higher than the contract price of the goods, and the party in default is the Buyer, the Buyer is not entitled to claim against the Seller for any difference between the market price and the contract price.

20. ARBITRATION AND APPEAL

Any dispute arising out of a contract incorporating CP4 shall be settled in accordance with the FCC Arbitration and Appeal Rules applicable on the date of the contract.

20.1 Claim for arbitration

A Party claiming for arbitration shall notify the other Party of the claim in accordance with the time limits stipulated below. Applications for arbitration shall be submitted to the FCC in accordance with the FCC Arbitration and Appeal Rules.

20.1.1 Time limits for quality and/or condition

For contracts with quality on departure, the claim shall be made within 56 days after stuffing of the container.

For contracts with quality upon arrival, the claim shall be made within 56 days after unstuffing of the container.

The arbitration hearing shall commence not later than 84 days after the samples have been taken.

20.1.2 Time limits for other than quality and/or condition

The claim shall be made within one year from the date of shipment or one year after the last day of the contracted shipment period if such has not taken place.

20.2 Discretion of arbitrators

In the event of non-compliance with any of the provisions of the Rule 20.1, and unless the arbitrators in their absolute discretion determine otherwise, claims shall be deemed to be waived and absolutely barred.

20.3 String arbitration

In the event that a Party claims that the contract forms part of a string of contracts which are subject to these Contract Rules and are in all relevant material points identical in terms except as to price, any arbitration for quality and/or condition may be held between the first Seller and the last Buyer in the string as though they were the only contracting Parties, provided that every Party against whom arbitration is claimed and who in turn claims to be in the string, shall have supplied copies of his contract and the invoice as well as any other relevant information required by the Arbitrators.

Any arbitration under this Rule shall be conducted in the language of the contract agreed between the first Seller and first Buyer pursuant to Rule 1.3.

The Arbitrators shall at their absolute discretion decide whether such contracts constitute a string for the purpose of this Rule.

Any award so made by the arbitrators shall, subject to the right of appeal available under the FCC Arbitration and Appeal Rules be binding on all Parties in the string and may be enforced by any Party in the string against his immediate contracting Party as though a separate award had been made under each contract.

20.4 Loss of rights to be in a string

Either Party to the contract shall be entitled to draw sealed samples as aforesaid but by doing so he shall relinquish any rights to be in a string as specified in Rule 20.3. This provision does not apply to the first Seller or last Buyer in a string.

PART 4 – SAMPLING PROCEDURES FOR ARBITRATION PURPOSES

21. APPLICABILITY

Parties may agree at the time of entering into the contract upon the applicable sampling procedures for the purposes of quality determination in accordance with Rule 15.1.1 or Rule 15.1.2 as appropriate. Unless otherwise agreed between the parties, for disputes referred to FCC Arbitration only samples prepared in accordance with the following procedures will be permitted. Under these Rules only cocoa products packed in sound Packaging Units up to a maximum weight of 1200kg may be sampled.

22. DEFINITIONS

22.1 Consignment

Means a container (1 teu) of Packaging Units.

22.2 Standard Sample

Means a quantity of cocoa product of a minimum of 150g (or such larger quantity as may be required in accordance with standard recognised analytical tests for the identified Defectives upon which the claim for arbitration is based) drawn from a single location in a Packaging Unit of less than 250kg and which will be used for the purposes of assessing the quality of the Consignment against the contract specification

22.3 Primary Sample

Means a quantity of cocoa product of not less than 10g drawn from a Packaging Unit in excess of 250kg. A minimum of 16 Primary Samples shall be drawn from each Packaging Unit in excess of 250kg selected for sampling.

22.4 Composite Sample

Means a sample of a minimum of 150g (or such larger quantity as may be required in accordance with standard recognised analytical tests for the identified defective(s) upon which the claim for arbitration is based) and formed from the homogenous mixing of Primary Samples drawn from and representative of each Packaging Unit in excess of 250kg and which will be used for the purposes of assessing the quality of the Consignment against the contract specification.

22.5 Defectives

Means those aspects of the quality which, on analysis of a Composite Sample or a Standard Sample prepared from samples which have been drawn from the Consignment in accordance with the Sampling Plan, are found not to be in accordance with the contract specification.

22.6 Packaging Unit

Means a single package containing a quantity of cocoa product.

22.7 Sample Size (n)

Means the number of Packaging Units to be sampled per Consignment.

22.8 Acceptance number (C)

Means the maximum number of Defectives permitted in accordance with the Sampling Plan in order to consider the Consignment as meeting the contract specification.

23. APPARATUS AND MATERIALS OF SAMPLING

Sampling instruments, apparatus and sample containers shall be clean (and where appropriate sterilised), dry and made of materials which are chemically and microbiologically inert to the product being sampled. After Primary samples or Standard samples have been drawn, the Packaging Units must be securely and hygienically resealed and repaired as necessary and clearly marked to show that the unit has been subject to sampling. Samples and the corresponding Packaging Units must be clearly labelled in this respect in order to ensure traceability of the sample and the date and place of sampling and the name of the sampler.

24. SAMPLING PLAN

For any given number of items within a consignment, the table below gives the sample size (n) and the acceptance number (C);

Samples to be taken randomly.

| Number of Packaging Units or Composite Samples as applicable within the Consignment | n | C |
|---|-----|----|
| 2 – 8 | 3 | 0 |
| 9 – 15 | 5 | 1 |
| 16 – 25 | 8 | 1 |
| 26 – 50 | 13 | 1 |
| 51 – 90 | 20 | 2 |
| 91 – 150 | 32 | 3 |
| 151 – 280 | 50 | 5 |
| 281 – 500 | 80 | 8 |
| 501 – 1200 | 125 | 12 |
| 1201 – 1320 | 200 | 18 |
| 1321 – 10000 | 315 | 18 |

This sampling plan is applicable to every type of cocoa product in any type of packaging, up to 1200 Kg, independent of intended method of analysis.

For Salmonella as the main food-borne hazard in cocoa and cocoa products, the acceptance number will at all times be set to zero (C = 0).

CP 4 Short Form Contract

SELLER:

ADDRESS:

BUYER:

ADDRESS:

This contract is subject to the **CONTRACT RULES FOR SHIPMENT OF PACKED COCOA PRODUCTS IN CONTAINERS ON FOB TERMS** which shall also be deemed to incorporate the FCC Arbitration and Appeal Rules in force on the date of this contract. Any dispute arising out of or in connection with this contract shall be referred to arbitration in accordance with the FCC Arbitration and Appeal Rules in force on the date of this contract.

SPECIFY CHOICE OF ARBITRATION LANGUAGE:

ENGLISH OR FRENCH

(If the choice of arbitration language is not specified then proceedings shall be conducted in English)

DATE :

CONTRACT NO. :

QUANTITY :

DESCRIPTION :

PRODUCT :

SHIPMENT PERIOD :

QUALITY ON ARRIVAL /DEPARTURE :

PRICE :

TERMS :

PAYMENT CONDITIONS :

SPECIAL CONDITIONS :

SIGNATURES :

SELLER

BUYER